

ZONING BOARD OF APPEALS
MEETING MINUTES

April 14, 2015

4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

ATTENDANCE:

Members Present:	Rick Barnes	Carlyle Sims
	Greg Dunn	Becky Squires
	Samuel Gray	John Stetler
	James Moreno	

Members Excused: Deland Davis

Staff Present: Jill Steel, City Attorney
Christine Zuzga, Planning & Zoning Supervisor
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

CORRESPONDANCE: None

OPENING COMMENTS: *Mr. John Stetler, Chairperson apologized for last month's lack of members; stated the meeting procedure where everyone present may speak either for or against an appeal and that he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. Stetler stated if denied the petitioner may appeal to the Circuit Court.*

OLD BUSINESS:

A. Appeal #A-01-15 Decision of Zoning Board Administrator (106 Battle Creek Ave.):

Ms. Grabiela Fernandez, 30 E. Columbia Ave., Ste. F-1 PMB 205, Battle Creek, MI 49015 on behalf of owner Mr. Robert B. Brazoban, 305 Palm Key Circle Apt 201, Brendon, Florida. Request to appeal the decision of the zoning officer that the legal non-conforming use as a 4-unit residential was lost, as the structure was converted to a single-unit for a property zoned "Two-Family Residential" located at 106 Battle Creek Avenue.

Ms. Christine Zuzga, Planning and Zoning Supervisor, stated this property was constructed in 1920 as a four-unit residential structure and has always allowed one/two family units as a permitted use, and that the city records shown it had been used as a 4-unit until it was purchased on May 17, 2012 by the current owner. Said that on May 18, 2012 the city received a complaint from a tenant and it was noted that it had not had a valid rental registration permit and so the city solicited for at that time. Noted the owner sent a fax to Code Compliance noting the entire structure would be for their own family and not rented and had asked Assessing Department to inspect and change to 100% homestead as a single-

family unit; per Assessing doors were opened up downstairs to put the home into a one-unit. In December 2014 owner requested to register property as a 4-unit; which was denied by letter written on 1/26/15 because it lost its legal non-conformity of a 4-unit when it was changed to a single-unit residential.

Ms. Grabiela Fernandez, 30 E. Columbia Ave., Ste. F-1 PMB 205, Battle Creek, MI 49015 representative of property owner as property manager was present and stated the information stated was correct except the structure was intact as a 4-unit at the time and only had closed the kitchen on second floor suite and used as washer & dryer and a kitchen on the 3rd floor was not changed. Stated she used her money to purchase this property in May 2012, so the children could live alone and that they are from the Dominican Republic and did not know about properties and she owns several properties and keep up with the city codes. Said they had financial issues and decided to move and now have three-units with persons having Section 8 with a one-year contract. Stated it is a livable residence and their attorney said the structure is not changed and is still 4-units and is asking to make an exception to keep it as a non-conforming 4-unit residential and that it would be a waste of property to use as a 2-unit. Ms. Fernandez said Mimi from Assessing and Dave from Zoning have been in the building and think they are doing good for society and that since built in 1900 it has been a 4-unit and not changed. Said the family has three children that want to live separately and the owner lives in Florida and they now pay the mortgage and am asking to please make an exception to keep it as a nonconforming use as a 4-unit residential.

Mr. Greg Dunn referenced the timeline document that stated this property was purchased in May of 2012 and that the tenants were leaving around September, October or November 2012 and when purchased it was a 4-unit? Ms. Fernandez said her niece said why pay taxes for multi-family and had lived there for 1.5 years as a single-family unit, but no change was made in the structure and just wanted the taxes to be less and as the owner of the property it is their choice to not have any tenants. Ms. Fernandez said that in 2014 they requested to make it a 4-unit and applied for the rental permit and did not know that her niece had changed it to a single-family unit.

Mr. James Moreno spoke to Ms. Fernandez in Spanish and said to board in English that in 2012 the family had changed this property to a single-family and did not understand that if it were reduced to single-family it would be permanent and not go back to a four-unit. Ms. Fernandez stated she never received a legal paper to tell them that if changed they would lose the legal non-conformity of a 4-unit.

Mr. Moreno asked Ms. Zuzga if a change in use is made by a property owner are they told the consequences and is the city under any obligation to inform the owner what the ramifications were if changed. Ms. Zuzga said there is no legal obligation to inform a property owner what their responsibilities or rights would be; if a call does come through the Planning Department, they do explain what would happen if that were the case. Stated that rental registrations come through the Code Department and so the city would not necessarily have been made aware of it until later, and at that point it may have already been converted or changed its use.

Mr. Greg Dunn stated in order to grant a variance they have to find that the problem is not a self-created problem.

Ms. Jill Steele, City Attorney noted a "Point of Order" said that this is not a variance request; it is an appeal of the decision of the Zoning Administrator and if they should uphold that decision.

Mr. Carlyle Sims asked staff, if prior to the year 2012, was this property rent certified for 4-units by Code Compliance. Ms. Zuzga stated up through the late 90's and early 2000's it had been licensed with the city, but that was before the ordinance had changed in 2008; after that the property did not have a current rental registration.

Ms. Fernandez stated she does not have control of what persons do with their properties; but they want to do the best they can and appreciate the boards time and service and ask to please allow the legal non-conforming use as a 4-unit residential.

Mr. John Stetler asked if there was any further discussion, seeing none he would entertain a motion.

MOTION WAS MADE BY MS. BECKY SQUIRES IN FAVOR THE APPELLANT TO APPROVE APPEAL #A-01-15 TO APPEAL THE DECISION OF THE ZONING OFFICER THAT THE LEGAL NONCONFORMING USE AS A 4-UNIT WAS LOST WITH THE CONVERSION TO A SINGLE-UNIT FOR PROPERTY ZONED "TWO-FAMILY RESIDENTIAL" FOR PROPERTY LOCATED AT 106 BATTLE CREEK AVENUE; SECONDED BY MR. JAMES MORENO.

Discussion:

Mr. James Moreno stated he can see the problem that arose from the fact that a family member decided to convert to a single residence at the time and did not fully understand the consequences and unfortunately gave up a four-unit non-conforming apartment and that the Zoning Boards hands are tied as it was changed by the resident owner at the time which puts us in a position to support the laws as it stands, which is they really cannot approve this request.

Mr. Greg Dunn stated the issue he has is that he cannot see where the city acted improperly that is outside the law as they worked with the owner and their wishes and are not at fault. Said when do you allow and not allow and to draw the line of allowing non-conforming properties to be moved into conformity and that it is the responsibility of the owner to understand and bear the responsibility of what they are requesting.

Mr. John Stetler stated he does not agree with the ordinance, that if a home is designed and built as a four-unit home; he cannot see where they are enhancing the value of the property or neighborhood to say now it can only be used for two-family use when it was not designed as such. Mr. Stetler stated he needs to follow the ordinance and not be allowed to vote in favor and that he would bring this to the Planning Commission for discussion. Said he would be voting against the appeal.

Mr. Greg Dunn stated this is not new, that the city had planned and zoned this neighborhood as a two-family area 65 years ago. Said that the ultimate idea is to return it to what it was initially zoned to be and remove the grandfathered legal nonconforming uses and that 65 years is long enough.

Ms. Jill Steele, City Attorney stated that in State statue and case laws and our ordinances, it is the goal of the city to eliminate non-conforming uses and this fits in with these provisions. Said if they show the intent is to eliminate the non-conforming use then it is gone and it is the goal to get them into compliance with zoning; and wanted to point out that ignorance of the law is not an excuse and it is not

the City's fault for the owner not knowing and that the owner benefited by paying less taxes and loss that nonconforming status in the process.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; NONE IN FAVOR; ALL OPPOSED, MOTION DENIED

Chairperson, Mr. John Stetler noted the appeal has been denied and they may appeal to the Circuit Court.

Ms. Grabiela Fernandez asked what her next step was. Mr. Stetler stated to hire an attorney and take it to Circuit Court. Ms. Fernandez stated she has to go with her lawyer to Circuit Court, said thank you.

NEW BUSINESS:

A. Election of New Officers:

Mr. Greg Dunn nominated Mr. John Stetler as Chairperson; Second by Ms. Becky Squires.

(No other nominations submitted)

Roll Vote Taken; All in Favor, None Opposed.

Mr. James Moreno nominated Mr. Greg Dunn as Vice-Chairperson; Seconded by Ms. Becky Squires. *(No other nomination submitted)*

Roll Vote Taken: All in Favor, None Opposed.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE DECEMBER 9, 2014 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. SAMUEL GRAY.

ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED –MINUTES APPROVED.

COMMENTS BY THE PUBLIC:

Mr. Dave Farmer, Zoning Officer, stated that the property owners had invited the City Assessor into the property at 106 Battle Creek Avenue to see that it had been changed to a Single-Family Residential; they had made alterations to make it that way. He had also met with the owners and discussed what changes are required for the number of units and what determines the number of units. Said the staff in the Planning Department and Assessor's Office makes it known when changes are made.

Mr. John Stetler stated with the property now being a two-unit; he is not sure that it enhances the neighborhood.

COMMENTS BY THE MEMBERS / STAFF:

Mr. Greg Dunn stated he was in agreement with Mr. David Farmer; if it is supposed to be a two-family neighborhood that the decision does improve the status of the neighborhoods if purchased it can be renovated and used as single-family homes or two-unit at a higher rent structure would improve the

neighborhood and property values. Said it is near the downtown area and would support further growth and businesses towards the downtown area and would be better for the city and citizens.

Mr. Carlyle Sims thanked the staff for the meeting material provided in a timely manner and that in this instance the parking would be an issue for a four-unit were the ordinance requires two parking spaces per unit required.

ADJOURNMENT: Meeting was adjourned at 4:42 P.M.

Submitted by: Leona A. Parrish, Administrative Assistant, Planning Department